



S.A.(MD)No.53 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.04.2025

CORAM:

**THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

S.A.(MD)No.53 of 2018

1. Chidambaram Pillai

(Memo filed in USR.No.790 dated 10.02.2017  
to the effect that 1<sup>st</sup> Appellant died and his legal  
heirs do not want to prosecute CMP(MD)No.1777 of 2016  
in the appeal is recorded vide Court order dated 16.02.2018  
made in S.A(MD)No.53 of 2018 by SSSRJ)

2. Perumal Pillai

... Appellants

Vs.

1. Nanjilnadu Vellala Azhakia Chozha Nangai Amman Trust,  
Representd by its trustees,  
(cause title accepted vide Court order dated 11.01.2018 made in  
CMP(MD)No.1777 of 2016 in SA(MD)SR.No.49324 of 2015  
by SSSRJ)

2. Thamburan Thozha Pillai

3. A.Sundar

4. K.Veera Bhagu

5. S.Velayuthan Pillai

6. Madhavan Pillai

... Respondents



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**Prayer:** The Second Appeal has been filed under Section 100 of C.P.C, to set aside the Judgment and Decree dated 30.06.2015 of the learned District Judge, Kanyakumari at Nagercoil made in A.S.No.16 of 2007, on his file, reversing, the judgment and decree dated 11.01.2007 of the learned Principal Subordinate Judge, Nagercoil, made in O.S.No.6 of 2007.

For Petitioner : Mr.K.N.Thampi

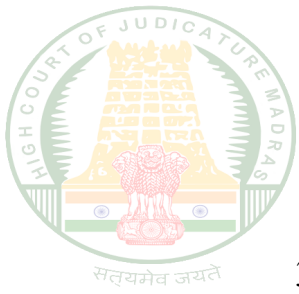
For R1 : Mr.R.Murugan

For R2 to R6 : No Appearance

### **JUDGMENT**

The plaintiffs in O.S.No.6 of 2006 on the file of the II Additional Subordinate Court, Nagercoil have filed this appeal challenging the dismissal of the suit.

2. The appellants are the 1<sup>st</sup> and 3<sup>rd</sup> plaintiffs in the said suit. They filed a suit for permanent injunction restraining the respondents/defendants from alienating the suit scheduled property.



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3. In the plaint in O.S.No.6 of 2006 it is stated that the temple viz., Azhakia Chozha Nangai Amman Temple in Theroor Village in Agasteeswaram Taluk is a religious denominational temple established by the Nanjilnad Vellalars of Theroor. The temple has number of immovable properties. The rent/income received from the temple properties were used for the purpose of maintenance of said temple.

4. A suit was filed for framing a scheme in O.S.No.58/1095 and the same was decreed on 19.04.1924. The scheme was framed on 19.10.2025 with the following contents:-

- A) There shall be a Management committee consisting of four members of which two will be trustees*
- B) One of the trustees shall function as the Managing Treasurer*
- C) The election of members of the Managing Committee and the Managing Treasurer shall be approved by the court*
- D) The trustees shall maintain accounts*
- E) Every year before the 31<sup>st</sup> Avani month the trustees shall submit the accounts of the previous year to the court. The court may give notice regarding the submission of accounts to the beneficiaries of the trust and hear objections if any. The trustees shall be liable if loss of money or property is provoked on scrutiny of accounts*
- F) Every year on the 1<sup>st</sup> of Pankuni month the next years' budget shall be prepared and produced in court by the trustees. The trustees shall expend monies of the trust only after consideration and approval of the annual budget.*



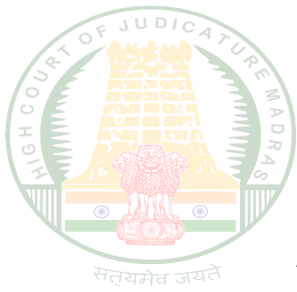
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- G) The Managing committee members and the trustees elected by the General Body of the Trust shall hold office for a period of three years*
- H) The notice regarding the convening of the General Body of the trust shall be by a notice to be published*
- I) Once in three years the managing committee shall prepare the voters' list of the trust beneficiaries*
- J) The general body of the trust shall be convened twice every year*

5. As per the scheme the respondents without properly conducting the General Body Meeting they declared themselves as Managing Trustees of the said temple and also trying to alienate the suit scheduled property. Therefore, the plaintiffs filed the suit in the interest of the Trust seeking relief of permanent injunction restraining the respondents/defendants from alienating the suit scheduled property.

6. The defendants viz., the office bearers have filed a written statement stating that there was no attempt made to alienate the suit schedule property. It is further stated that proper General Body Meeting was conducted and the present office bearers namely the defendants were duly selected. Hence, they seek for dismissal of the suit.



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7. The learned Trial Judge dismissed the suit in O.S.No.6 of 2007 by a judgment and decree dated 11.01.2007. Aggrieved over the same, the plaintiffs filed the appeal and the same was also dismissed on 30.06.2015 in A.S.No.16 of 2007. Aggrieved over the same, the present second appeal has been filed. At the time of admission the following substantial question of law was framed:-

*“When it is admitted that the suit properties are the properties of the Trust and the lower appellate Court has also found that the suit properties can be sold by the Trust only after getting permission as required in law, whether the lower Court is right in dismissing the suit in its entirety, in a case where the defendant has taken a stand that they can sell the property without any permission?”*

8. During the course of second appeal, the respondents viz., the office bearers filed an affidavit before this Court undertaking that they will not alienate the suit scheduled property. The said undertaking affidavit also is extracted hereunder:-



- 3 -

for permanent Injunction restraining the defendants who were the erstwhile trustees of the suit from alienating the property belonged to the trust and the suit was dismissed. The first appeal filed by the appellants/ plaintiffs in A.S.No.16 of 2007 on the file of the court of the District Judge, Kanyakumari also dismissed and against the judgement and decree, the appellants/ plaintiffs have preferred the present second appeal.

3. I humbly submit that, there were about 15 persons who are the beneficiaries of the suit trust agreed to purchase the suit property which was divided into several house plots and paid different sums to the trust totalling Rs.2,75,500/- which was duly accounted in the accounts of the trust.

4. I humbly submit that, because of the long pendency of the suit and appeal, the parties who paid money to the suit trust decided to cancel the contract and receive the amount paid by them and accordingly in the general body meeting held on 20.05.2017, it was resolved and resolutions were passed to repay the amount received by the trust from the intended purchasers in instalments and as per the resolution, the persons received the amount partly and the same is stated in a separate sheet attached herewith.

5. I humbly submit that, the persons who paid money to the trust for purchase of property have no grievance over the trust and they agreed to receive the amount in instalments. I herewith

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undertake that I will not alienate the property belonged to the trust which is the subject matter property in the suit in O.S.No.6 of 2006 on the file of the Principal Sub Court, Nagercoil.

6. I humbly submit that, from the above said factual circumstances, that there is no lis pending and the second appeal deserves to be dismissed.

It is therefore prayed that this Hon'ble Court may be pleased to accept this affidavit and pass appropriate orders in S.A.(MD)No.53 of 2018 pending before this Hon'ble Court and thus render justice.

Solemnly affirmed that the contents of this affidavit were read out and explained in Tamil in my presence to the executants, who appeared perfectly to understand the same and made his signature in my presence at Madurai on this the 10<sup>th</sup> day of February, 2025 Nagercoil.  
April.

BEFORE ME



ADVOCATE, MADURAI NAGERCOIL

**T. RAJAKUMAR, M.A., LL.B.**  
ADVOCATE  
ENROL. NO: M.S 2065/2022  
Boothapandi No.5 lane  
NAGERCOIL Shoolathal  
9443791652 Kandyam



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9. In view of the above undertaking, the substantial question of law framed in the second appeal answered accordingly in favour of the appellants and the appellants are entitled for the decree of permanent injunction restraining the defendants or the present office bearers or the prospective officer bearers from alienating the suit scheduled property except with the permission of the Court. Accordingly, the second appeal is allowed in the following terms:-

- i. The present office bearers or any other office bearers who would be elected in the future are restrained from alienating the suit scheduled property without permission of the Court.
- ii. There shall be no order as to costs.

**24.04.2025**

NCC :yes/No  
Index :yes/No  
Internet:yes/No  
rgm



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**K.K. RAMAKRISHNAN, J.**

rgm

To

1. The Principal Subordinate Judge, Nagercoil
2. The District Judge, Kanyakumari at Nagercoil
3. The Section Officer,  
V.R. Section (Records)  
Madurai Bench of Madras High Court,  
Madurai.

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